

REMARKS/ARGUMENTS

The arguments and amendments presented herein include the arguments and amendments Applicants discussed with the Examiner during phone interview dated July 15, 2009.

Applicants submit that the arguments and amendments presented herein make the substance of the phone interview of record to comply with 37 CFR 1.133. If the Examiner believes that further information on the interview needs to be made of record to comply with the requirements, Applicants request the Examiner to identify such further information.

The Examiner found that claims 6, 10, 16, 20, 30, and 34 would be allowed if rewritten in independent form including the requirements of the base and any intervening claims. (OA4, pg. 5)

1. Amended Claims Comply with 35 U.S.C. §101

The Examiner rejected claims 1-10 and 15-34 as not falling within a statutory category (35 U.S.C. §101). (OA4, pg. 2).

Applicants amend claims 1 and 25 as discussed during the phone interview to add hardware elements, such as the adaptor, to the claims to overcome the rejection.

Applicants amend claim 1 to recite that the method is “implemented in a computer system having an adaptor”, that the connections is established “between the adaptor and a link partner”, that the duplex mode is for “adaptor transmissions”, and that the error rate is monitored “between the adaptor and the link partner”. These added requirements are disclosed in at least FIGs. 1, 2, 4 and paras. 6-11 and 17-18 of the Specification.

Applicants amend claim 25 to recite that the “article of manufacture” comprises “a computer readable storage medium including code executed to control an adaptor in communication with a link partner and initiate operations adaptor and a link partner”, that the connections is established “between the adaptor and a link partner”, that the duplex mode is for “adaptor transmissions”, and that the error rate is monitored “between the adaptor and the link partner”. These added requirements are disclosed in at least FIGs. 1, 2, 4 and paras. 6-11 and 17-18 of the Specification.

During the phone interview, the Examiner said that these amendments could overcome the Section 101 rejection by adding hardware elements to the claims.

Applicants submit that these amendments to claims 1 and 25 overcome the Sec. 101 rejection and request the withdrawal of the Sec. 101 rejection.

2. Amended Claims are Patentable over the Cited Art

Applicants amend independent claims 1, 11, 23, and 25 to include the requirements of allowable claims 10, 20, and 34, where the requirements of allowable claim 20 are added to both claims 11 and 23. Applicants submit that these amendments incorporating the allowable subject matter into the dependent claims places all the claims in condition for allowance.

Claims 10, 20, and 34 are canceled.

Claims 31 and 32 are amended to conform the claim language to amendments made to the base claim 25.

Conclusion

For all the above reasons, Applicants submit that the pending claims 1-9, 11-19, and 21-33 are patentable. Should any additional fees be required beyond those paid, please charge Deposit Account No. 50-0585.

The attorney of record invites the Examiner to contact him at (310) 553-7977 if the Examiner believes such contact would advance the prosecution of the case.

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